

**Memorandum of Understanding Between
The Maine Department of Environmental Protection and
The Maine Land Use Planning Commission regarding
Site Location of Development and Wind Energy Development Reviews**

This Memorandum of Understanding (MOU) describes the roles and responsibilities of the Department of Environmental Protection (DEP or Department) and the Land Use Planning Commission (LUPC or Commission) in the review of projects under the Site Location of Development Law (Site Law) and the Maine Wind Energy Act in accordance with the jurisdictional changes made by An Act to Reform Land Use Planning in the Unorganized Territory, enacted as Public Law 2011, Chapter 682. These jurisdictional changes are effective September 1, 2012. The goal of this MOU is to provide clarity to the Department and Commission regarding coordination between the two agencies in this process, to avoid redundancy, maximize efficiencies, and to minimize the burden for the Department, Commission, and applicants. Nothing in this MOU alters the obligations of the Department or Commission as set out in state law.

Projects Affected

Public Law 2011, Chapter 682, transfers permitting authority for projects under the Site Law in the unorganized and deorganized areas of the state to the DEP effective September 1, 2012. This includes grid-scale wind energy developments reviewed under the Site Law. As a result of the jurisdictional changes set out in Chapter 682, the DEP will also issue any permits necessary under the Natural Resources Protection Act (NRPA) for those projects which the DEP reviews under the Site Law.

Chapter 682 specifically reserves to the LUPC the permitting authority for development within a Planned Subdistrict which was accepted for processing prior to September 1, 2012 (other than a grid scale wind project), community-based offshore wind energy projects, and amendments or revisions to a development approved by the LURC/LUPC prior to September 1, 2012 unless the proposed revision by itself triggers the Site Law. The LUPC retains its permitting authority for projects which do not trigger the Site Law.

The DEP and the LUPC recognize the complexity of potential jurisdictional questions that may arise regarding the application of Chapter 682. Any advisory opinions necessary for the determination of whether a project requires a Site Law permit will be the sole responsibility of the DEP. If a project is exempt from or otherwise not subject to Site Law permitting, it will be the sole responsibility of the LUPC to determine the need for and issue decisions on any permit applications under Title 12. The review of further development or modification of projects approved by the DEP under the Site Law will continue to be the sole responsibility of the DEP, subject to the certification requirement set out below. The LUPC retains authority to review building permit applications for development on individual lots in a subdivision approved by the DEP under the Site Law when that subsequent development does not independently trigger the Site Law.

LUPC Certification

Chapter 682 establishes criteria for incorporating certain LUPC regulatory requirements into DEP approvals of Site Law projects in LUPC territory. These criteria are found at 38 M.R.S. § 489-A-1(2), which provides, in relevant part:

- A. The proposed development is an allowed use within the subdistrict or subdistricts in which it is to be located. Subdistricts and allowed uses are established in rule by the Maine Land Use Planning Commission in accordance with Title 12, section 685-A; and,

- D. The Maine Land Use Planning Commission has certified that the proposed development meets any land use standard established by the Commission and applicable to the project that is not considered in the Department's review under subsection 1.

Chapter 682 further stipulates that the LUPC will provide the DEP with certification, or a finding that the application does not qualify for certification, regarding an application's compliance with subparagraphs A and D. This certification will be incorporated into the final agency action issued by the DEP as evidence of compliance or noncompliance with subparagraphs A and D.

Zoning Compliance

To allow the DEP to meet the statutory timelines for processing applications under the Site Law, it is important that potential Commission zoning issues be dealt with as early in the planning of a project as possible. Therefore, applicants will be encouraged to obtain the certification required under subparagraph A prior to submitting an application under the Site Law to the DEP. If a special exception or rezoning is necessary, the LUPC will notify the DEP of this fact within the 15-day acceptance review period or will notify the DEP and the applicant that additional information is needed to make such a determination. The DEP may deem such applications unacceptable for processing until such issues have been resolved.

LUPC Land Use Standards

Certification of compliance with LUPC land use standards not considered in the DEP review as required under subparagraph D may be obtained (1) by the applicant from the LUPC prior to the submission of an application to the DEP, or (2) may be applied for concurrently with the DEP application. If certification has not been obtained prior to submission of an application to the DEP, the applicant will be required to submit to the DEP a copy of the application for certification that it has filed with the LUPC. An application to the DEP submitted without either (1) the certification, or (2) a copy of a complete application for such certification, will be deemed incomplete and not accepted for processing by the DEP.

In order to allow the DEP to meet statutory timelines for processing applications, where an applicant elects to simultaneously submit its certification application to the Commission and the Site Law application to the DEP, the LUPC will provide certification, or a finding that the application does not qualify for certification, to the DEP and the applicant within 60 days of acceptance of a complete certification application if the application does not require direct review by the Commission. If review by the Commission is required and no public hearing is held, a certification finding will be provided within 90 days. If a public hearing is held, a certification finding will be provided within 60 days after closure of the hearing.

In reviewing an application for certification of compliance with the Commission's land use standards, the Commission will only evaluate compliance with standards not considered by the DEP under the Site Law, Wind Energy Act, or NRPA. Among the land use standards that the Commission will consider in reviewing a certification application under subparagraph D are:

Federal Emergency Management Agency flood zone management standards;

Minimum lot size, dimensional requirements, and non-conforming uses; and

Land division history review.

Coordination of Process

The DEP's review of the remainder of the application will be based on existing statutory and regulatory standards under the Site Law, the Stormwater Law, the NRPA, and the Wind Energy Act. No new DEP rules are necessary to accomplish these reviews.

The LUPC will produce, in consultation with DEP, forms setting out the submission requirements for LUPC certifications and these forms will be incorporated into the DEP's Site Law application. This may include separate public notice forms to satisfy the requirements of the DEP and/or the LUPC. LUPC certifications will be based on existing LUPC statutory and regulatory standards.

If at any time the LUPC adopts other land use standards not addressed under the Site Law, Wind Energy Act or NRPA it will notify the DEP and these forms will be updated accordingly.

The LUPC will continue to provide all necessary and appropriate public participation opportunities for the review of the issues for which it is responsible. The DEP will continue to provide all necessary and appropriate public participation opportunities consistent with its statutory and regulatory requirements. The DEP and the LUPC will each provide notice to the other regarding public participation activities. On a project-by-project basis, the DEP and the LUPC may coordinate these processes.

When the DEP approves any subdivision in LUPC territory under the Site Law, DEP will include a condition of approval that requires the recording of the approved subdivision plat. Subsequent development on individual lots which does not independently trigger the Site Law would be subject to LUPC approval under Title 12.

Community Based Offshore Wind Projects

When a community based off-shore wind project, or other wind project in LUPC territory not subject to review under the Site Law, requires DEP certification as a smaller-scale wind project, the DEP will provide that certification in accordance with existing procedures for smaller-scale wind projects under 35-A M.R.S. § 3456.

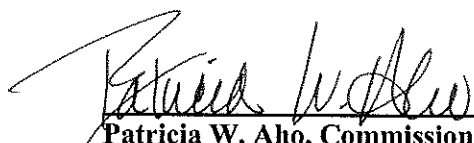
Compliance Coordination

Field staff of the DEP and the LUPC shall coordinate to ensure compliance with all Site Law permits issued in LUPC territory. Violations of permits issued by the DEP that are reported to or observed by the field personnel of the LUPC shall be referred to the DEP for action. Violations of permits or certifications issued by the LUPC that are reported to or observed by DEP staff shall be referred to the LUPC for action. The DEP and the LUPC may coordinate on investigations to make the most efficient use of staff resources. The DEP will retain sole authority to take an enforcement action related to permits issued by DEP. LUPC will retain sole authority to take an enforcement action related to permits issued by LUPC and concurrent authority to seek enforcement action related to LUPC issues certified to the DEP as described above.

In witness whereof, the undersigned have executed this Memorandum of Understanding on behalf of the Maine Department of Environmental Protection and the Maine Land Use Planning Commission.

Agreed to this 31 day of August, 2012.


Gwen Hilton, Chair
Land Use Planning Commission


Patricia W. Aho, Commissioner
Department of Environmental Protection